



December 27, 1999

Mr. David L. Hay  
Coordinator for Information  
Under the Texas Public Information Act  
Dallas County Community College District  
R.L. Thornton, Jr. Building  
701 Elm Street  
Dallas, Texas 755202-3299

OR99-3761

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131155.

The Dallas County Community College District (the "district") received a request for the name of the company that provided a negative reference for a painting company bidding on a job. You claim that the requested information is excepted from required public disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." It protects the interests of the governmental body by allowing it to withhold information while it continues to seek more favorable offers. The provision does not continue to protect information after the contract has been awarded. *See* Open Records Decision Nos. 541 at 5 (1990), 514 at 2 (1988), 319 at 3 (1982). You have not explained how telling a bidder which reference was negative would give any advantage to a competitor or bidder. Nor have you told us whether the contract was awarded, though we may assume that it was in fact awarded to someone other than the requestor. You must release the requested information.

In response to your request for guidance in handling requests for the identities of negative references in the future, we direct you to sections 552.007 and 552.301 of the Government Code. You may provide any information that is not otherwise confidential without seeking an attorney general's opinion. Gov't Code § 552.007. However, if you seek to withhold information that you believe to be excepted from required public disclosure, you must ask for a decision from the attorney general if there has not been a previous determination *as to that specific information*. Gov't Code § 552.301(a). In this case, the source of the negative reference is public information and must be made available to any person.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 131155

Encl. Submitted documents

cc: Mr. Ron Winters  
A-AGAPE Painting  
605 Daniel Street  
Gladwater, Texas 75647  
(w/o enclosures)